MT LEGISLATIVE HISTORY

Chapter 350 1987

Bill H 546 S _____ Original bill & hist. ✓ C

H. Committee on Judiciary		S. Committee on Judiciary	
Hearing Date(s) _____	___C	Hearing Date(s) _____	___C
_____	___C	_____	___C
2/16	✓C	3/9	✓C
_____	___C	_____	___C
Date Out 2/20	✓C	3/13	✓C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

MONTANA STATE SENATE

JUDICIARY COMMITTEE

50TH LEGISLATURE

COMMITTEE MEMBERS: Senator Joe Mazurek, Chairman
Senator Bruce Crippen, V. Chairman
Senator Tom Beck
Senator Al Bishop
Senator Chet Blaylock
Senator Bob Brown
Senator Jack Galt
Senator Mike Halligan
Senator Dick Pinsoneault
Senator Bill Yellowtail

STAFF ATTORNEY: Valencia Lane

COMMITTEE SECRETARY: Mary Huber

BOOK: 1 of 4

INCLUSIVE DATES: January 6 - January 30, 1987

HOUSE BILL NO. 546

INTRODUCED BY FRITZ

IN THE HOUSE

JANUARY 30, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
FEBRUARY 21, 1987	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 23, 1987	PRINTING REPORT.
FEBRUARY 24, 1987	SECOND READING, DO PASS.
	ON MOTION, RULES SUSPENDED AND BILL PLACED ON THIRD READING THIS DAY.
	THIRD READING, PASSED. AYES, 96; NOES, 4.
	TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 2, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
MARCH 14, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 18, 1987	SECOND READING, CONCURRED IN.
MARCH 20, 1987	THIRD READING, CONCURRED IN. AYES, 49; NOES, 0.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 25, 1987	RECEIVED FROM SENATE.
	SECOND READING, AMENDMENTS CONCURRED IN.
MARCH 26, 1987	THIRD READING, AMENDMENTS CONCURRED IN.
	SENT TO ENROLLING.

INTRODUCED BY J. House BILL NO. 546

A BILL FOR AN ACT ENTITLED: "AN ACT TO MODIFY THE DEFINITION OF ABSOLUTE LIABILITY; TO PROVIDE IMPOSITION OF ABSOLUTE LIABILITY FOR PERSONS CONVICTED OF DRIVING WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; AND AMENDING SECTIONS 45-2-104, 61-8-401, AND 61-8-406, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-2-104, MCA, is amended to read:

"45-2-104. Absolute liability. A person may be guilty of an offense without having, as to each element thereof, one of the mental states described in subsections (33), (37), and (58) of 45-2-101 only if the offense is punishable by a fine not exceeding $500 **and** or the statute defining the offense clearly indicates a legislative purpose to impose absolute liability for the conduct described."

Section 2. Section 61-8-401, MCA, is amended to read:

"61-8-401. Persons under the influence of alcohol or drugs. (1) It is unlawful and punishable as provided in 61-8-714 for any person who is under the influence of:

(a) alcohol to drive or be in actual physical control of a vehicle upon the ways of this state open to the public;

(b) a narcotic drug to drive or be in actual physical control of a vehicle within this state;

(c) any other drug to a degree which renders him incapable of safely driving a vehicle to drive or be in actual physical control of a vehicle within this state; or

(d) alcohol and any drug to a degree that renders him incapable of safely driving a vehicle to drive or be in actual physical control of a vehicle within this state.

(2) The fact that any person charged with a violation of subsection (1) is or has been entitled to use alcohol or such a drug under the laws of this state does not constitute a defense against any charge of violating subsection (1).

(3) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person driving or in actual physical control of a vehicle while under the influence of alcohol, the concentration of alcohol in the person's blood at the time alleged, as shown by chemical analysis of the person's blood, urine, breath, or other bodily substance, shall give rise to the following presumptions:

(a) If there was at that time an alcohol concentration of 0.05 or less, it shall be presumed that the person was not under the influence of alcohol.

(b) If there was at that time an alcohol concentration in excess of 0.05 but less than 0.10, that fact shall not give rise to any presumption that the person was or was not

LC 1640/01

INTRODUCED BILL
HB 546

under the influence of alcohol but such fact may be considered with other competent evidence in determining the guilt or innocence of the person.

(c) If there was at that time an alcohol concentration of 0.10 or more, it shall be presumed that the person was under the influence of alcohol. ~~Such--presumption---is rebuttable.~~

(4) The provisions of subsection (3) do not limit the introduction of any other competent evidence bearing upon the issue of whether the person was under the influence of alcohol.

(5) Each municipality in this state is given authority to enact 61-8-406, 61-8-408, 61-8-714, 61-8-722, and subsections (1) through (4) of this section, with the word "state" in 61-8-406 and subsection (1) of this section changed to read "municipality", as an ordinance and is given jurisdiction of the enforcement of the ordinance and of the imposition of the fines and penalties therein provided.

(6) Absolute liability will be imposed for a violation of this section."

Section 3. Section 61-8-406, MCA, is amended to read:

"61-8-406. Operation of vehicle by a person with alcohol concentration of 0.10 or more. It is unlawful and punishable as provided in 61-8-722 for any person to drive or be in actual physical control of a vehicle upon the ways

of this state open to the public while the alcohol concentration in his blood, breath, or urine is 0.10 or more. Absolute liability will be imposed for a violation of this section."

-End-

HOUSE BILL NO. 546

INTRODUCED BY FRITZ

A BILL FOR AN ACT ENTITLED: "AN ACT TO MODIFY THE DEFINITION OF ABSOLUTE LIABILITY; TO PROVIDE IMPOSITION OF ABSOLUTE LIABILITY FOR PERSONS CONVICTED OF DRIVING WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; AND AMENDING SECTIONS 45-2-104, 61-8-401, AND 61-8-406, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-2-104, MCA, is amended to read:

"45-2-104. Absolute liability. A person may be guilty of an offense without having, as to each element thereof, one of the mental states described in subsections (33), (37), and (58) of 45-2-101 only if the offense is punishable by a fine not exceeding $500~~,~~ ~~EXCEPT FOR AN OFFENSE UNDER 61-8-401 OR 61-8-406~~ and or AND OR the statute defining the offense clearly indicates a legislative purpose to impose absolute liability for the conduct described."

Section 2. Section 61-8-401, MCA, is amended to read:

"61-8-401. Persons under the influence of alcohol or drugs. (1) It is unlawful and punishable as provided in 61-8-714 for any person who is under the influence of:

(a) alcohol to drive or be in actual physical control of a vehicle upon the ways of this state open to the public;

(b) a narcotic drug to drive or be in actual physical control of a vehicle within this state;

(c) any other drug to a degree which renders him incapable of safely driving a vehicle to drive or be in actual physical control of a vehicle within this state: or

(d) alcohol and any drug to a degree that renders him incapable of safely driving a vehicle to drive or be in actual physical control of a vehicle within this state.

(2) The fact that any person charged with a violation of subsection (1) is or has been entitled to use alcohol or such a drug under the laws of this state does not constitute a defense against any charge of violating subsection (1).

(3) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person driving or in actual physical control of a vehicle while under the influence of alcohol, the concentration of alcohol in the person's blood at the time alleged, as shown by chemical analysis of the person's blood, urine, breath, or other bodily substance, shall give rise to the following presumptions:

(a) If there was at that time an alcohol concentration of 0.05 or less, it shall be presumed that the person was not under the influence of alcohol.

(b) If there was at that time an alcohol concentration in excess of 0.05 but less than 0.10, that fact shall not

give rise to any presumption that the person was or was not under the influence of alcohol but such fact may be considered with other competent evidence in determining the guilt or innocence of the person.

(c) If there was at that time an alcohol concentration of 0.10 or more, it shall be presumed that the person was under the influence of alcohol. ~~Such--presumption--is rebuttable.~~ SUCH PRESUMPTION IS REBUTTABLE.

(4) The provisions of subsection (3) do not limit the introduction of any other competent evidence bearing upon the issue of whether the person was under the influence of alcohol.

(5) Each municipality in this state is given authority to enact 61-8-406, 61-8-408, 61-8-714, 61-8-722, and subsections (1) through (4) of this section, with the word "state" in 61-8-406 and subsection (1) of this section changed to read "municipality", as an ordinance and is given jurisdiction of the enforcement of the ordinance and of the imposition of the fines and penalties therein provided.

(6) Absolute liability AS PROVIDED IN 45-2-104 will be imposed for a violation of this section."

Section 3. Section 61-8-406, MCA, is amended to read:

"61-8-406. Operation of vehicle by a person with alcohol concentration of 0.10 or more. It is unlawful and punishable as provided in 61-8-722 for any person to drive

or be in actual physical control of a vehicle upon the ways of this state open to the public while the alcohol concentration in his blood, breath, or urine is 0.10 or more. Absolute liability AS PROVIDED IN 45-2-104 will be imposed for a violation of this section."

-End-

JUDICIARY COMMITTEE

50TH LEGISLATIVE SESSION

1987

Committee Members	District
Rep. Earl Lory, Chairman	59
Rep. John Mercer, Vice Chairman	50
Rep. Kelly Addy	94
Rep. Dave Brown	72
Rep. Tom Bulger	37
Rep. John Cobb	42
Rep. Fritz Daily	69
Rep. Paula Darko.	2
Rep. Ralph Eudaily	60
Rep. Leo Giacometto	24
Rep. Bud Gould	61
Rep. Ed Grady	47
Rep. Tom Hannah	86
Rep. Vernon Keller	83
Rep. Al Meyers	53
Rep. Joan Miles	45
Rep. Paul Rapp-Svrcek	51
Rep. Bill Strizich	41

Secretary

Renee Podell

Staff

John McMaster

Form CS-32
Rev. 1985

STATUS SHEET

50th LEGISLATIVE SESSION

JUDICIARY COMMITTEE

HOUSE BILL NUMBER	ENTERED COM. DATE	DATE CON-SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON-CURRED IN DATE	BE NOT CON-CURRED IN DATE	BE CON-CURRED IN AMENDED DATE	C
495	2/11/87	2/14/87	tabled								
501	2/13/87	2/14/87			2/11/87	2/14/87					
502	2/16/87	2/17/87	2/18/87	tabled							
503		2/9/87	2/17/87	2/17/87							
509		2/16/87	2/16/87			2/16/87					
514		2/10/87	2/20/87	tabled							
522		2/9/87	2/23/87	tabled							
546		2/16/87	2/20/87			2/20/87					
548		2/16/87	2/23/87	tabled							
554		2/10/87	2/10/87	2/10/87							
558		2/13/87	2/16/87			2/16/87					
564		2/11/87	2/20/87			2/20/87					
566		2/12/87	2/21/87			2/21/87					
567		2/11/87									

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

February 16, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on February 16, 1987, at 7:00 a.m. in Room 312 D of the State Capitol.

ROLL CALL: All members were present with the exception of Reps. Brown and Meyers who were absent and Rep. Eudaily who was excused.

EXECUTIVE SESSION:

ACTION ON HOUSE BILL NO. 720:

Rep. Addy moved that HB 720, DO PASS. Rep. Addy moved to amend HB 720 by inserting "10". Rep. Daily moved a substitute motion to strike "50" and insert "25". Question was called, a voice vote was taken. The motion CARRIED 14-1 with Rep. Rapp-Svrcek dissenting. (See Amendments Attached). Rep. Daily moved that HB 720 DO PASS As Amended. Question was called and a voice vote was taken. The motion CARRIED unanimously. HB 720 DO PASS AS AMENDED.

ACTION ON HOUSE BILL NO. 715:

Rep. Daily moved to table HB 715. A voice vote was taken and the motion CARRIED 9-5. HB 715, TABLED.

ACTION ON HOUSE BILL NO. 679:

Rep. Addy moved that HB 679, DO PASS. Question was called and a voice vote was taken. The motion CARRIED unanimously. HB 679, DO PASS.

ACTION ON HOUSE BILL NO. 664:

Rep. Gould moved that HB 664, DO PASS. Question was called and a voice vote was taken. The motion CARRIED 14-1 with Rep. Cobb dissenting. HB 664, DO PASS.

ACTION ON HOUSE BILL NO. 655:

Rep. Addy moved that HB 655, DO PASS. Rep. Addy moved to amend by striking the language "shall" and inserting "may".

Rep. Daily asked Rep. Swift if the handout material reflects take home pay or net pay. He stated that he is not at liberty to say.

Rep. Swift closed the hearing on HB 351 by stating that the thrust of this bill is not to award anyone an amount that they are not capable of earning.

HOUSE BILL NO. 509, Rep. Schye, District No. 18, stated that this bill prohibits the operation of an aircraft by a person under the influence of alcohol or drugs, providing blood alcohol standards. He submitted a letter from Jim Burnett, Chairman of the National Transportation Safety Board, (Exhibit A), who stated that the threat of alcohol and drug abuse to aviation safety is a matter of deep concern to the NTSB. As the federal agency designated by Congress to investigate aviation accidents, we have seen the tragic consequences of alcohol and drug use by pilots in many accidents. He stated that this measure addresses the shortcomings in the Federal/State enforcement system and by enacting this statute, Montana will make it clear that alcohol and drug impaired pilots have no place in this state.

PROPONENTS:

MICHAEL D. FERGUSON, State of Montana, Department of Commerce, Aeronautics Division, presented amendments to HB 509 and explained them. (Exhibit B). He stated that this bill is in response to the National Transportation Safety Board and the FAA's request to address this shortcoming in Montana statutes, thus making enforcement of the Federal Air Regulation nearly impossible in Montana and nine other states. He urged support.

ARTHUR L. WELLS, Clancy, stated that present regulations that incorporate these changes also provide that the FAA would be furnished upon request a copy of any testing of alcohol and drugs. He further stated that he is speaking on behalf of the FAA and he urged passage for HB 509.

DAVE BLACKMAN, Lobbyist for the Montana Public Health Association and the American Public Health Association in Montana, testified in favor of this legislation on the books. He stated that this bill is very necessary and urged support.

There were no further proponents, no opponents or questions.

Rep. Schye closed the hearing on HB 509 by stating that Montana has more pilots and airplanes per capita than any other state with the exception of Alaska. He said, when we

are talking about public safety, it only takes one person to cause a problem and this is a very essential piece of legislation.

HOUSE BILL NO. 546, Rep. Fritz, District No. 56, stated that this bill makes is easier to convict drunken drivers by inserting the presumption of absolute liability. He stated that a necessary amendment has been made to the bill on page 3, lines 6-7, the phrase, "such presumption is rebuttable", was mistakenly eliminated from current law and it was a drafting error. What is being removed from the bill is that the driver did not know that he was too drunk to drive, he said. A condition for punishment is a fine not exceeding $500.00 and a legislative purpose to impose absolute liability. He pointed out that he was asked to carry this bill by the Department of Justice.

PROPONENTS:

DAVE BLACKMAN, Lobbyist for the Montana Public Health Association, he urged support for the passage of this amendment because it will close one of the loop holes for defense.

JIM NUGENT, City of Missoula, League of Cities and Towns, went on record in support of this amendment.

There were no further proponents and no opponents.

QUESTIONS (or Discussion) ON HOUSE BILL 546:

Rep. Rapp-Svrcek asked Mr. MacMaster, in light of Rep. Gould's bill, is this bill necessary. He stated Rep. Gould's bill is a different section of the law.

Rep. Fritz closed the hearing on HB 546 by stating that absolute liability offenses are offenses for which the state does not have to prove a mental state to obtain a conviction. The bill imposes absolute liability on DUI in order to remove this loophole in the law.

HOUSE BILL NO. 548, Rep. Simon, District No. 91, stated that this act requires a governmental entity contemplating a project involving private land to notify the affected landowner prior to publicly disclosing the project. He pointed out that at least 30 days notice should be given to the landowner.

PROPONENTS:

M. JEANNE WHITE, Billings, stated that the threat of condemnation of private property is a major problem to anyone who

DAILY ROLL CALL

JUDICIARY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 9 Feb 16, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)		✓	
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)		✓	✓
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)	✓		
BILL STRIEICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)		✓	
EARL LORY (R)	✓		

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VISITORS' REGISTER

Judiciary COMMITTEE

BILL NO. 346 DATE Feb. 16, 1987

SPONSOR

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Jim Nugent	City of Missoula	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

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MINUTES OF THE MEETING
JUDICIARY COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

February 20, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on February 20, 1987, at 7:00 a.m. in Room 312 D of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Eudaily who was excused.

EXECUTIVE SESSION:

ACTION ON HOUSE BILL NO. 636:

Rep. Cobb moved that HB 636 be TABLED. A voice vote was taken and the motion CARRIED unanimously. HB 636 TABLED.

ACTION ON HOUSE BILL NO. 135:

Rep. Cobb moved that HB 135 DO PASS. Question was called and a voice vote was taken. The motion CARRIED unanimously. HB 135 DO PASS.

ACTION ON HOUSE BILL NO. 474:

Rep. Addy moved that HB 474 DO PASS. Rep. Mercer moved to amend by striking subsection (1) in its entirety. Question was called and a voice vote was taken. The motion CARRIED unanimously. (See Amendments Attached). Rep. Mercer moved that HB 474 DO PASS AS AMENDED. Question was called and a voice vote was taken. The motion CARRIED 13-2. HB 474 DO PASS AS AMENDED.

ACTION ON HOUSE BILL NO. 491:

Rep. Giacometto moved that HB 491 DO PASS. Question was called and a voice vote was taken. The motion CARRIED unanimously. HB 491 DO PASS.

ACTION ON HOUSE BILL NO. 670:

Rep. Addy moved that HB 670 DO PASS. Rep. Addy moved to amend HB 670 inserting an effective date of July 1, 1987. Question was called and a voice vote was taken. The motion CARRIED unanimously. (See Amendments Attached). Rep. Addy moved DO PASS AS AMENDED. Question was called and a voice vote was taken. The motion CARRIED 10-4, with Reps, Brown,

do with it, it was transferred to Judiciary, and that is not fair to the bill. There is good in this bill, she said.

Rep. Miles stated that the problem between the major companies and the small gas station owners is valid. She said that the intent of the bill is good, but we cannot send it out of committee when there are problems with it.

Rep. Addy pointed out that either we leave the problem where it is at or bring the parties to the bargaining table. He suggested that it be made cleaner.

Rep. Rapp-Svrcek requested that this bill be held in committee so that amendments can be proposed by the sponsor. Chairman Lory held action on this bill until a later date. HB 475 held in committee.

ACTION ON HOUSE BILL NO. 57:

Rep. Addy moved that HB 57 be TABLED. A voice vote was taken and the motion CARRIED unanimously. HB 57 TABLED.

ACTION ON HOUSE BILL NO. 546:

Rep. Giacometto moved that HB 546 DO PASS. He moved amendments on page 3, line 7 inserting the language "such presumption is rebuttable". Question was called and a voice vote was taken. The motion CARRIED unanimously. (See Amendments Attached).

Rep. Giacometto moved that HB 546 DO PASS AS AMENDED. Mr. MacMaster pointed out that in order to make this bill work the structure of the bill will have to be changed. He stated that in order to have an absolute liability offense (as per the current law, section 45-2104) the statute that creates it must say that it intends to have absolute liability. The penalty cannot be any kind of jail or imprisonment, and it has to be a fine of less than $500.00. What makes this work is the word "and " on line 16. He pointed out that there are a number of statutes in the criminal code as to which it will no longer have to be proven any mental state element exists and the statute will have a mental state element. He said that there still be a number of current laws where this mental state will no longer have to be proven.

Rep. Addy asked Mr. MacMaster if the Legislative purpose is to impose absolute liability and would the suggested language have to be repeated in the other statutes in order to be effective and to make a clear Legislative purpose. Mr. MacMaster stated that in any statute where there is absolute liability the current law stated that a mental state must be

required. The sponsor of the bill really only wants to make it an absolute liability offense if there is a section 401 DUI or a section 406 per se DUI. He said that currently both DUI statutes have a penalty of $500.00 or more and it is possible to get a jail term, so, he suggested that on page 1, line 16, following "$500.00" an insertion should be made with the language of "except for an offense under 61-8-401 or 61-8-406" and strike the "or" and insert "and". Rep. Addy moved the amendment. Question was called and a voice vote was taken. Rep. Giacometto moved that HB 546 do PASS AS AMENDED. A voice vote was taken and the motion CARRIED unanimously. HB 546 DO PASS AS AMENDED.

ACTION ON HOUSE BILL NO. 668:

Rep. Bulger moved that HB 668 DO PASS. Rep. Mercer explained the per se DUI offense, and stated that if this bill passes it requires the judge to put an offender in jail and a second offense of DUI per se requires a mandatory jail sentence of seven days. He said that he feels the current DUI laws are strict enough. Rep. Miles moved the Department's amendments. Mr. MacMaster explained that if the amendments are adopted, the title must also be amended. Rep. Giacometto moved that the title be amended.

Question was called on the amendments. A voice vote was taken and the motion CARRIED unanimously. Rep. Giacometto moved that HB 668 DO PASS AS AMENDED.

Rep. Meyers stated that he is opposed to this bill. Rep. Bulger pointed out that a technical defect in the law is being addressed in this bill and when someone must be picked up for DUI three times before they spend seven days in jail. This is a loophole in the law and this bill is needed. Rep. Mercer said that all this bill is doing is closing a minimum mandatory loophole of spending seven days in jail. Question was called and a voice vote was taken. The motion CARRIED 8-7. HB 668 DO PASS AS AMENDED.

ACTION ON HOUSE BILL NO. 687:

Rep. Addy moved that HB 687 DO PASS. Rep. Addy moved amendments. Rep. Addy stated that the fine of $250.00 is too high. Rep. Mercer pointed out that under subsection (2) if a child steals a package of gum, the parents must pay a fine of $100.00 and that is too much money. He moved that the original language be returned so that the parent penalty will not exceed the amount of the value of the goods. Rep. Gould said that the testimony presented in the hearing by the Retail Association said that it costs each person in the state $322.00 per year for shoplifting and he stated that he opposes the amendments. Rep. Bulger pointed

DAILY ROLL CALL

JUDICIARY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Feb 20, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)			✓
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)	✓		
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

CS-30

STANDING COMMITTEE REPORT

February 20, 19 87

Mr. Speaker: We, the committee on JUDICIARY

report HOUSE BILL NO. 546

XX ☐ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

XX ☐ as amended
☐ statement of intent attached

Chairman

1. Page 1, line 16.
Following: "$500"
Insert: ", except for an offense under 61-8-401 or 61-8-406,"
Strike: "or"
Insert: "and"

2. Page 3, line 7.
Following: "rebuttable."
Insert: "Such presumption is rebuttable."

AHB546/JK/JM2

REPORT LCB4

MONTANA LEGISLATIVE COUNCIL BILL STATUS SYSTEM
FINAL COMMITTEE REPORT OF REFERRED BILLS
COMMITTEE--(S) JUDICIARY

RUN TIME 08:
RUN DATE.... 04/22/

CHAIRMAN--SEN. JOE MAZUREK
NORMAL SCHEDULE==> SITE: ROOM 325 DAYS: MON THRU FRI TIME: 10:00 A.M.

SECRETARY-MARY HUBER

--BILL NO---	REFER DATE---	HEARING DATE---	CONSIDERATION DATES---	COMMITTEE ACTION---	REREFERRED TO COMM---	DATE O
HB0491	3/02	3/26		CONCUR		3/26
SPAETH, GARY			AMEND CONSTITUTION TO ALLOW RESIDENCY OF LOWER COURT JUDGES BE SET BY LAW			
HB0495	3/02	3/16		CONCUR AS AMENDED		3/21
CORNE, DICK			EXPAND COVERAGE OF OFFENSE OF CUSTODIAL INTERFERENCE			
HB0501	2/21	3/26		CONCUR AS AMENDED		3/26
CODY, DOROTHY			INTERPLEADER IN SMALL CLAIMS COURT PROCEDURE			
HB0503	2/21	3/24		CONCUR AS AMENDED		3/26
BRADLEY, DOROTHY			EXTEND LANDOWNER IMMUNITY TO TOURING OF CULTURAL AND HISTORICAL SITES			
HB0504	3/09			CONCUR AS AMENDED		3/21
KADAS, MIKE			LIMIT CHALLENGES TO INITIATIVES PRIOR TO ELECTION			
HB0509	2/21	3/09		CONCUR AS AMENDED		3/21
SCHYE, TED			PROHIBIT THE OPERATION OF AN AIRCRAFT WHILE UNDER INFLUENCE OF ALCOHOL/DRUGS			
HB0546	3/02	3/09		CONCUR AS AMENDED		3/13
FRITZ, HARRY			MODIFY ABSOLUTE LIABILITY DEFINITION -- APPLY TO DUI OFFENSES			
HB0554	2/16	3/23		CONCUR AS AMENDED		3/26
DAILY, FRITZ			PAY CRIME VICTIMS THE PERPETRATOR'S PROCEEDS OF THE CRIME			
HB0558	2/21	3/09		CONCUR		3/11
GOULD, BUDD			REVISE AND CLARIFY RESPONSIBILITY FOR CRIME COMMITTED WHILE INTOXICATED			
HB0564	3/02	3/26		CONCUR AS AMENDED		3/26
WILLIAMS, MEL			REVISE CITY COURT JURISDICTION AND PROCEDURE			

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 9, 1987

The thirty-eighth meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. on March 9, 1987 by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All member were present.

CONSIDERATION OF HB 396: Representative Robert Pavlovich of Butte introduced HB 396 (see Exhibit 1).

PROPONENTS: Larry Majerus, Department of Justice, said the bill is just a clarification in the drivers suspension law.

OPPONENTS: None

DISCUSSION ON HB 396: Senator Mazurek asked what an example would be of fraudulent use of a drivers license. Mr. Majerus said someone who uses another person's license to get into a bar while under the drinking age. He said the bill is for the guy that let the under age youth use the license to get into a bar (Exhibit 1A).

Representative Pavlovich closed on the bill.

CONSIDERATION ON HB 558: Representative Bud Gould of Missoula presented HB 558 to the committee (see Exhibit 2).

PROPONENTS: Marc Racicot, Montana County Attorney Association, explained the history of the current law. He said in the past, the common law wanted a person responsibile for his voluntary acts including consuming of alcoholic beverages. He said there were two exceptions to that: if a person was compelled by another to consume alcohol and or a person was deceived into drinking the alcohol. He said the alcohol involvement in a crime was used in the past to determine the defense. He said there are 16 states that prohibit the use of involuntary intoxication in criminal actions. He said the more one drinks while driving the more in trouble a person is, but that is exactly the opposite when it comes to criminal crimes. He said the more a person has to drink while involved in a criminal crime, the easier the conviction. He said this happens most often in homicide cases where intoxication can be used as a defense.

OPPONENTS: None

DISCUSSION ON HB 558: Senator Halligan questioned why the involuntary

Rayleen Beaton, STOP DUI task force, supported the bill also.

OPPONENTS: None.

DISCUSSION ON HB 163: Senator Crippen asked what the difference is between "lessen to the slightest degree", which was striken from the bill, and "diminished". Senator Crippen asked if the House Judiciary had an exact definition of diminish in their minds. Representative Mercer answered that the House Judiciary felt it was a battle of words. Senator Crippen asked if a tired legislator is on his way home from the session, wouldn't that individual's ability to operate that vehicle diminished somewhat. Senator Crippen asked if that person is committing a crime. Represenative Mercer said no he was not, because the person was not weaving down the road, if the person was, then the policeman could give him a ticket.

Senator Mazurek asked how one can prove "diminished" when one doesn't have the test. Mr. Hull said the overall testimony against a person will show the diminished amount. Mr. Hull said that many people want to use the defense that yes they were drunk and yes they were weaving down the road, but the person didn't hit anything before being pulled over. He said that is used all the time as a defense.

Representative Mercer closed.

CONSIDERATION OF HB 546: Representative Harry Fritz of Missoula introduced HB 546 (see Exhibit 7).

PROPONENTS: George Schunk, Department of Justice, said he doesn't like what the House did to the bill and he handed out a summary of what the bill looked like before the House amended it and after, and what Harry Fritz would like to do with the bill (see Exhibit 8). He hoped the committee would return the bill to its original estate or table the bill.

Jacqueline N. Terrell, American Insurance Association, supported the bill, but presented an amendment also (see Exhibit 9).

Bonnie Tippy, Alliance for Independent Insurers, support the bill.

Randy Gray, State Farm Insurance, supported the bill also.

OPPONENTS: None

DISCUSSION ON HB 546: Senator Mazurek asked if the committee adopts the amendment that Mr. Schunk purposed, would it not make every misdemeanor a liability offense. Mr. Schunk replied that the fine would have to

less than $500 and no jail time. Senator Mazurek asked what offenses are we talking about here. Mr. Schunk said most of the offense in Title 61, which is the traffic code, have some jail time. He said the motor vechile code offense also include jail time.

Representative Harry Fritz closed on the bill.

The committee adjourned for executive action.

ACTION ON HB 53: Valencia gave the committee the amendment that would strike that repealer that leaves the maintainance of the Old Supreme Court Chambers unfunded (see Exhibit 10). Senator Crippen moved the amendment. The motion CARRIED. Valencia felt section 110 on page 166 should be looked at more carefully, so the committee held on action on the bill.

ACTION ON HB 19: Senator Mazurek said the bill will change the probate code for surving spouses with the homestead allowance act. He said it will make sure they get at least $20,000 off the top. Senator Bishop said that Mercer had some problems with that money coming right off the top of the estate. Senator Bishop explained that a Mr. Dave Johnson is the best in the business as far as the probate code and he said the committee should leave it alone. Senator Bishop moved the amendments presented by Valencia (the first three amendments and the last amendment in the Standing Committee Report). The amendments CARRIED. Senator Halligan moved on page 3, line 2 to strike $1,200 and insert $2,500. The motion CARRIED. Senator Yellowtail moved to strike on page 2, line 21 $4,500 and insert $6,000. The motion CARRIED. Senator Yellowtail still felt the bill doesn't do anything for the farmer. Senator Halligan moved the bill BE CONCURRED IN AS AMENDED. The motion CARRIED with Senators Pinsoneault and Yellowtail voting no (see Exhibit 11).

The committee adjourned at 12:00 p.m.

Chairman

ROLL CALL

Judiciary COMMITTEE

50th LEGISLATIVE SESSION -- 1987 Date March 9

NAME	PRESENT	ABSENT	EXCUSED
Senator Joe Mazurek, Chairman	X		
Senator Bruce Crippen, Vice Chairman	X		
Senator Tom Beck	X		
Senator Al Bishop	X		
Senator Chet Blaylock	X		
Senator Bob Brown	X		
Senator Jack Galt	X		
Senator Mike Halligan	X		
Senator Dick Pinsoneault	X		
Senator Bill Yellowtail	X		

COMMITTEE ON _____

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check Support
Kathy Seeley	Dept of Justice	HB 163	✓
Lon Whiteside	Dept of Justice	HB 163 3rd	✓
David N. Hull	City of Helena	HB 163	✓
MARK J MURFET	DOE J	HB 163	✓
David LACKMAN	MT Public Health Assn	HB 163	✓
" "	" " " "	HB 346	✓
Rick Day	Dept. of Revenue	HB 55	U/A
DAVID LACKMAN	MT Public Health Assn	HB 509	✓
MARC RACICOT	MT County ATTORNEYS	HB 558	✓
Brookes Morin	City of Helena	HB 163	✓
Kaylee Boston	Stop DUI Task Force	HB 163	✓
Catherine Lovell	Am. Insurance Assoc	HB 546	✓
JR Budd Gould	Dist 61	HB 558	—
Fred W. Hendrong	Montana Chiropractic Division	HB 509	✓
Joshua I Wells	Federal Aviation Admin	HB 509	✓
George Schunk	Dept of Justice	HB 546	✓
JUDITH CARLSON	Co HEALTH	HB 163	✓
M.E. "Micky" Nelson	Stop DUI Task Force	HB 163	—
Bonnie Iggy	AII	HB 546	✓
Randy Gray	NAII ; State Farm	HB 546	✓

(Please leave prepared statement with Secretary)

DATE

BILL NO. HB 54

SUMMARY OF HB546 (FRITZ)
(Prepared by Senate Judiciary Committee staff)

HB546 amends the statutes relating to imposition of absolute liability (that is, criminal liability even though the defendant has not met all requisite elements of mental state) and driving under the influence. This bill imposes absolute liability for persons convicted of driving while under the influence of alcohol or drugs.

Under current law, absolute liability can be imposed only if the offense is punishable by a fine not exceeding $500 and the statute defining the offense clearly states that absolute liability will be imposed. As originally drafted, the bill amended the statute on absolute liability [section 1 of the bill] by changing "and" to "or"; so that absolute liability could be imposed in any cases where the defining statute provided for absolute liability. The bill then amended the DUI statutes to provide for absolute liability.

As amemded by the House, absolute liability can only be imposed in cases where a fine can be imposed of less than $500 except in cases of DUI and , in all cases, if the defining statute so provides. That is, absolute liability can be imposed in cases of over $500 only if the case is a DUI. In other words, the bill as amended by the House accomplishes what was originally intended by the bill and limits the provisions of the bill only to DUI offenses. As originally drafted, absolute liability could possibly be extended to any other crime in the future by a simple amendment to a defining statute making absolute liability apply to that crime.

C:\LANE\WP\SUMHB546.

SENATE JUDICIARY
EXHIBIT NO. 8
DATE March 9, 1987
BILL NO. HB 546

HB 546, DUI ABSOLUTE LIABILITY

I. Section 45-2-104, as presently enacted means:

Unless an offense has (1) no possibility of jail time and (2) an express purpose to be an absolute liability offense, it cannot be so considered and must contain a mental state element (e.g. jury instruction on knowingly provided defendants).

II. HB 546, as introduced provided:

45-2-104. Absolute liability. A person may be guilty of an offense without having, as to each element thereof, one of the mental states described in subsections (33), (37), and (58) of 45-2-101 only if the offense is punishable by a fine not exceeding $500 ~~and~~ or the statute defining the offense clearly indicates a legislative purpose to impose absolute liability for the conduct described.

III. HB 546, as amended by the House Judiciary Committee and passed by the House provides:

"45-2-104. Absolute liability. A person may be guilty of an offense without having, as to each element thereof, one of the mental states described in subsections (33), (37), and (58) of 45-2-101 only if the offense is punishable by a fine not exceeding $500, EXCEPT FOR AN OFFENSE UNDER 61-8-401 OR 61-8-406, ~~and~~ ~~or~~ AND the statute defining the offense clearly indicates a legislative purpose to impose absolute liability for the conduct described."

SENATE JUDICIARY
EXHIBIT NO. 8
DATE 3-9-87
BILL NO. H.B. 546

March 9, 1987

BILL AMENDMENT

To amend blue copy of House Bill No. 546 introduced by Representative Fritz.

1. Page 1, lines 16 and 17.
Following: "$500" on line 16
Strike: the remainder of line 16 through "AND" on line 17
Insert: "or"

SENATE JUDICIARY
EXHIBIT NO. 9
DATE March 9, 1985
BILL NO. HB 546

STATEMENT OF
AMERICAN INSURANCE ASSOCIATION
BY
JACQUELINE N. TERRELL
RE HB546

The American Insurance Association supports the intent and effect of this bill. The specific language of the amendments to 61-8-401 and 61-8-406, MCA, however, cause concern relative to future interpretation and spillover to civil liability. We therefore request that:

Page 3, line 20, and
Page 4, line 4

both be amended to read:

after "liability" insert "as provided in 45-2-104"

so that the resulting sections would state in part

Absolute liability AS PROVIDED IN 45-2-104 will be imposed for a violation of this section.

So amended, we recommend a do pass on the bill.

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 13, 1987

The forty-second meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. on March 13, 1987 by Chairman Joe Mazurek in Room 402 of the Capitol Building

ROLL CALL: All members were present.

CONSIDERATION OF HJR 13: Representative Nancy Keenan of Anaconda presented HJR 13, which urges the court to adopt guidelines for child abuse witness. She handed out guidelines that were provided by the American Bar Association (see Exhibit 1).

PROPONENTS: Noel Larrivee, representing himself, testified in support of the bill.

John Madson, SRS, went on record for support of HJR 13.

OPPONENTS: None.

DISCUSSION ON HJR 13: Senator Blaylock asked if sexual abuse has increased or is society finding out that more of it goes on then we think. Mr. Larrivee said there is an alarming rate of sexual abuse of children in this nation.

ACTION ON HJR 13: Senator Halligan moved the bill BE CONCURRED IN. The motion CARRIED.

CONSIDERATION OF HB 800: Representative Paul Rapp-Svrcek of Polson introduced HB 800 (see Exhibit 2). He stated he had a constituent that was a first time offender in not paying his child support and he wanted to do something to clear his name. He said the fellow simply forgot to pay one month.

PROPONENTS: None

OPPONENTS: Marsha Detes, Helena, stated that she has received child support payments up to four months late and no authority seems to care. She said the system should be tighten up more, instead of eased as this bill will do. She felt if an offender of not paying child support gets away with it once, he will do it again.

Donna Ecklan, Helena, said her income is child support. She said the

ACTION ON HB 188: Senator Blaylock moved the bill BE CONCURRED IN. The motion CARRIED.

ACTION ON HB 546: Senator Blaylock moved to strike the language on page 1, line 16 through 17 and insert the word "or". Senator Crippen asked if this amendment will put the amount under $500. Senator Mazurek said if there is a $500 fine or more and a jail sentense, then that is where one goes to (2) of the bill. The motion CARRIED.

Senator Mazurek said he would like to see section 45 2 104 be put into the bill. Senator Galt moved to put the section in on page 3, line 20 and page 4, line 4. The motion CARRIED. Senator Beck moved the bill BE CONCURRED IN AS AMENDED. The motion CARRIED.

CONSIDERATION OF HJR 21: Senator Crippen said many people were not to sure about having a "several judge trial". Senator Mazurek stated that is tough on the smaller towns to get a judge. The committee decided to sit on the bill for awhile.

CONSIDERATION OF HB 435: Robert Scott, testified yesterday, gave written testimony to the committee (see Exhibit 7). Senator Yellowtail moved the bill BE NOT CONCURRED IN. He felt the bill was way too extreme for having a minute amount of drugs on a piece of property that belongs to a person.

Senator Bishop said if we put the drug seller or drug grower in jail, then they will not need a car or property, like a trailor house for awhile.

The motion CARRIED with Senator Galt voting no.

ACTION ON HB 800: Senator Pinsoneault moved the bill BE NOT CONCURRED IN. Senator Bishop thought it was a little funny that a man forgets only one payment out of several as Representative Rapp Svrcek stated. The motion CARRIED with Senators Yellowtail and Blaylock voting no.

ACTION ON HB 163: Senator Mazurek said he had concerns about the concept of the "slightest degree diminished". He felt that the term was too broad and wasn't easy to define. He said if the committee passes the bill out like it is now, the courts will have nothing but a bunch of "mushy" language to work with.

Senator Galt suggested using the words "appreciately diminished". Senator Mazurek thought of the words "significantly diminished", he felt it tighten the bill too much. Senator Galt moved to insert the word "appreciably" on page 2, line 7. The motion CARRIED. Senator Brown moved the bill BE CONCURRED IN AS AMENDED. The motion CARRIED.

STANDING COMMITTEE REPORT

March 13 19 87

MR. PRESIDENT

We, your committee on SENATE JUDICIARY

having had under consideration HOUSE BILL No. HBR 546

Third reading copy (blue color)

Modify absolute liability definition - Apply to DUI offenses.
Fritz (Halligan)

Respectfully report as follows: That HOUSE BILL No. 546

be amended as follows:

1. Page 1, lines 16 and 17.
Following: "$500" on line 16
Strike: the remainder of line 16 through "AND" on line 17
Insert: "or"

2. Page 3, line 20.
Following: "liability"
Insert: "as provided in 45-2-104"

3. Page 4, line 4.
Following: "liability"
Insert: "as provided in 45-2-104"

~~DO PASS~~

~~XXXXXXXX~~ AND AS AMENDED
DO NOT PASS

BE CONCURRED IN

HOUSE BILL NO. 546

INTRODUCED BY FRITZ

A BILL FOR AN ACT ENTITLED: "AN ACT TO MODIFY THE DEFINITION OF ABSOLUTE LIABILITY; TO PROVIDE IMPOSITION OF ABSOLUTE LIABILITY FOR PERSONS CONVICTED OF DRIVING WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; AND AMENDING SECTIONS 45-2-104, 61-8-401, AND 61-8-406, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-2-104, MCA, is amended to read:

"45-2-104. Absolute liability. A person may be guilty of an offense without having, as to each element thereof, one of the mental states described in subsections (33), (37), and (58) of 45-2-101 only if the offense is punishable by a fine not exceeding $500~~,--EXCEPT-FOR--AN--OFFENSE--UNDER 61-8-401-OR-61-8-406,~~ and or AND OR the statute defining the offense clearly indicates a legislative purpose to impose absolute liability for the conduct described."

Section 2. Section 61-8-401, MCA, is amended to read:

"61-8-401. Persons under the influence of alcohol or drugs. (1) It is unlawful and punishable as provided in 61-8-714 for any person who is under the influence of:

(a) alcohol to drive or be in actual physical control of a vehicle upon the ways of this state open to the public;

(b) a narcotic drug to drive or be in actual physical control of a vehicle within this state;

(c) any other drug to a degree which renders him incapable of safely driving a vehicle to drive or be in actual physical control of a vehicle within this state; or

(d) alcohol and any drug to a degree that renders him incapable of safely driving a vehicle to drive or be in actual physical control of a vehicle within this state.

(2) The fact that any person charged with a violation of subsection (1) is or has been entitled to use alcohol or such a drug under the laws of this state does not constitute a defense against any charge of violating subsection (1).

(3) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person driving or in actual physical control of a vehicle while under the influence of alcohol, the concentration of alcohol in the person's blood at the time alleged, as shown by chemical analysis of the person's blood, urine, breath, or other bodily substance, shall give rise to the following presumptions:

(a) If there was at that time an alcohol concentration of 0.05 or less, it shall be presumed that the person was not under the influence of alcohol.

(b) If there was at that time an alcohol concentration in excess of 0.05 but less than 0.10, that fact shall not

give rise to any presumption that the person was or was not under the influence of alcohol but such fact may be considered with other competent evidence in determining the guilt or innocence of the person.

(c) If there was at that time an alcohol concentration of 0.10 or more, it shall be presumed that the person was under the influence of alcohol. ~~Such--presumption--is rebuttable.~~ SUCH PRESUMPTION IS REBUTTABLE.

(4) The provisions of subsection (3) do not limit the introduction of any other competent evidence bearing upon the issue of whether the person was under the influence of alcohol.

(5) Each municipality in this state is given authority to enact 61-8-406, 61-8-408, 61-8-714, 61-8-722, and subsections (1) through (4) of this section, with the word "state" in 61-8-406 and subsection (1) of this section changed to read "municipality", as an ordinance and is given jurisdiction of the enforcement of the ordinance and of the imposition of the fines and penalties therein provided.

(6) Absolute liability AS PROVIDED IN 45-2-104 will be imposed for a violation of this section."

Section 3. Section 61-8-406, MCA, is amended to read:

"61-8-406. Operation of vehicle by a person with alcohol concentration of 0.10 or more. It is unlawful and punishable as provided in 61-8-722 for any person to drive

or be in actual physical control of a vehicle upon the ways of this state open to the public while the alcohol concentration in his blood, breath, or urine is 0.10 or more. Absolute liability AS PROVIDED IN 45-2-104 will be imposed for a violation of this section."

-End-